

MARGO PANOS TRUST, GUS G. PANOS, TRUSTEE

IBLA 76-697

Decided November 5, 1976

Appeal from decision of the New Mexico State Office, Bureau of Land Management, canceling oil and gas lease NM 24486.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Filing

Where a person acting as trustee for two discrete trusts for two different minors files an oil and gas simultaneous filing entry card for the same parcel for each of the trusts, in the absence of any agreement, scheme, or plan which would confer on the trustee or settlor a benefit from the lease, such filing is not violative of the regulation, 43 CFR 3112.5-2, prohibiting multiple filings.

2. Oil and Gas Leases: Applications: Filing—Oil and Gas Leases: Cancellation

It is proper to require a trustee of a trust, who is filing oil and gas offers therefor, to file any information relevant to determining whether the offeror is a qualified offeror, including without limitation, data bearing upon multiple filings in a simultaneous procedure. However, it is impermissible for the Bureau of Land Management to require the trustee to furnish other information not germane to those inquiries. The cancellation of a lease for failure to furnish data, some of which was not properly required, will be set aside on appeal and the trustee afforded another opportunity to furnish such data as was properly required.

APPEARANCES: H. Byron Mock, Esq., Mock, Shearer and Carling, Salt Lake City, Utah.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Gus G. Panos filed a simultaneous oil and gas drawing entry card in the New Mexico State Office, Bureau of Land Management (BLM), as trustee for the Margo Panos Trust. ^{1/} The entry card was for parcel 456 and on January 10, 1975, the entry card was drawn number one. The offer was given serial number NM 24486, and on March 6, 1975, a lease was issued effective April 1, 1975.

By decision dated March 24, 1975, BLM canceled the lease explaining that Gus G. Panos had filed two offers for the same tract, one as trustee for the Margo Panos Trust and one as trustee for the Patrick T. Panos Trust. BLM stated that, according to 43 CFR 3112.5-2, the filings gave Gus G. Panos "a greater probability of successfully obtaining a lease or an interest therein to the tract."

Counsel for the Margo Panos Trust filed a timely appeal from such decision. On July 23, 1975, on the basis of a written request filed by the Office of the Solicitor, this Board vacated the March 24, 1975, decision and remanded the case to BLM for further consideration.

Subsequently, by letter dated March 17, 1976, BLM informed Gus G. Panos that in order to reconsider the case involving lease NM 24486 it would be necessary for him to file the following information:

1. A list of the specific assets originally placed in each trust.
2. A list of the specific current assets in each trust as of the date of the offers. (NM 24445, NM 24486 and NM 24495) (Note: A statement that the assets consist of "Money, Federal oil and gas leases, and overriding royalty interests" is too general and not acceptable. The specific amount of money; the serial numbers, acreage and interests in Federal oil and gas leases; and the percentages of overriding royalty interests in specific leases must be provided.)

^{1/} In the statement of reasons for appeal, counsel for appellant has stated that pursuant to the terms of the Margos Panos Trust such trust has been terminated and the assets of the trust distributed to Margo Panos because she has reached the age of 21 years. The Margo Panos Trust was irrevocable by its terms.

3. A statement whether the trustee, the settler [sic], or both has filed an offer on his behalf for the same lands for which the trust applied.

4. A list of previous offers for Federal oil and gas leases where the trustee, the settler [sic], or both applied for the same land as the trust, the serial numbers, the dates of the offers, and the successful offers.

5. An accounting of payments, if any, made from trust assets (corpus or income) of each trust; to whom the payments were made; the dates of the payments; and the purpose of the payments.

Mr. Panos was allowed 60 days within which to file the requested information.

By letter dated May 14, 1976, counsel for appellant responded stating that all pertinent and proper information had previously been filed and that he had advised his client not to provide any additional information.

On June 28, 1976, BLM issued a decision canceling lease NM 24486. ^{2/} BLM explained that because Gus G. Panos, Trustee for Margo Panos Trust, did not comply with the request for information "and without the information a determination cannot be made regarding multiple filings, this lease is cancelled."

The regulation, 43 CFR 3102.1-1(b), provides that even though an oil and gas lease may not be issued to a minor, a lease may be issued to a trustee on behalf of a minor. Therefore, a trustee may properly file a simultaneous offer drawing card in the name of a trust for a minor.

^{2/} The decision stated that in addition to the two cards filed by Gus G. Panos as the trustee for the two separate trusts, a card was also filed for the parcel by one Gus (NMI) Panos. The decision explained:

"It is the duty of this office to determine whether or not the filings of Gus G. Panos as trustee and Gus (NMI) Panos are considered multiple filings. In order for a determination to be made, this office must have additional evidence."

This is the first mention of a filing by one Gus (NMI) Panos. The March 17, 1976, request for information did not mention Gus (NMI) Panos, nor was such a person mentioned in the first decision canceling the lease. The lease was canceled on March 24, 1975, because Gus G. Panos was considered to have made multiple filings by filing two cards in his capacity as trustee for two separate trusts.

With respect to multiple filings, 43 CFR 3112.5-2 provides in pertinent part:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. * *

* In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bona fide purchaser as provided for in § 3102.1-2 intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

Lease NM 24486 which was issued to Margo Panos Trust, Gus G. Panos, Trustee, was originally canceled because Gus G. Panos also filed for the same parcel as trustee for the Patrick T. Panos Trust. BLM held that such filing violated 43 CFR 3112.5-2. At the request of BLM the Board vacated that decision on appeal and remanded the case to BLM. BLM requested certain information of Gus G. Panos. When the information was not provided, the lease was canceled.

On appeal it is asserted that the information requested by BLM bears no relation to the question of multiple filings. Specifically, in response to the numbered requests set forth, supra, counsel for appellant argues that:

The requests for information in paragraphs numbers one and two are privileged [sic], confidential financial information having no bearing whatever on prohibited multiple filings. The requests for information in paragraphs three and four are requests for information already on file and in the possession of the Bureau of Land Management. The request in paragraph five appears to be an attempt to determine whether the trustee benefits from the lease awarded to the minor's

trust. The trustee acts without compensation and has no interest whatever in leases which may be granted.

Counsel for appellant contends that all information required by regulation has been filed and that the other requested information goes "beyond the legitimate concerns of the agency."

[1, 2] The provision of the regulations concerning information which must be filed by a trustee is 43 CFR 3102.5-1 which reads:

If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

Therefore, the trustee must provide BLM with (1) a copy of the trust agreement; (2) his statements as to the minor's citizenship and holdings of the minor; and (3) a similar statement as to his own citizenship and holdings under the Mineral Leasing Act, including his holdings for the benefit of other minors.

We can find no other regulations governing information to be filed by a trustee, other than 43 CFR 3102.5-2 which refers to evidence previously filed and provides that if a trustee has previously filed evidence of his authority to act as trustee a reference by serial number to the record in which such evidence was filed, together with a statement as to any amendments, will be accepted.

However, this Board has recognized recently in Robert C. Leary, 27 IBLA 296 (1976), the authority of the Bureau of Land Management to obtain information from an offeror pertinent to a determination whether the oil and gas offers are cognizable as having been filed by qualified offerors. See Robertson v. Udall, 349 F.2d 195 (D.C. Cir. 1965). For the same reason, BLM may insist that an offeror file information pertinent to a determination of whether there has been multiple filing in contravention of the regulations, e.g., 43 CFR 3112.5-2. In that context it would be appropriate for BLM to require Gus G. Panos to file the following data:

1. A list of the federal oil and gas leases, and interests therein, originally placed in each trust.

2. A list of the specific current assets which are federal oil and gas leases, interests therein in each trust as of the date of the offers. (Note: A statement that the assets consist of "federal oil and gas leases, and overriding royalty interests" is too general and not acceptable. The specific serial numbers, acreage and interests in federal oil and gas leases; and the percentages of overriding royalty interests, or other interests, in specific federal oil and gas leases must be provided.)

3. A statement whether the trustee, the settlor, or both has filed an offer on his behalf for the same lands for which the trust applied.

4. A list of previous offers for federal oil and gas leases where the trustee, the settlor, or both applied for the same land as the trust, the serial numbers, the dates of the offers, and the successful offers, if any.

5. An accounting of payments, if any, made from trust assets (corpus or income) of each trust derived from federal oil and gas leases, or interests therein; to whom the payments were made; the dates of the payments; and the purpose of the payments.

This request for data will enable BLM to determine whether unlawful multiple filings have been made and whether the trustee by reason of his compensation under the trust, has had an interest in more than one offer filed for a particular parcel. Counsel's forensic statement that "[t]he trustee acts without compensation and has no interest whatever in leases which may be granted" is not sufficient. A statement is required over the signature of Gus G. Panos. See 18 U.S.C. § 1001 (1970); 43 CFR 1821.3-1. That some of the information may already be of record in BLM does not vitiate the propriety of the request – it is appellant's duty to establish its qualifications in a format convenient to BLM.

Since the requested data went beyond the bounds of proper inquiry by BLM, we deem it appropriate to authorize BLM to afford appellant 30 days from notice of its decision implementing our determination within which to furnish the data which may be properly requested, as set forth above, failing in which the cancellation of oil and gas lease NM 24486 will stand.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

the decision appealed from is affirmed as modified and the case remanded for further proceedings consistent herewith.

Frederick Fishman
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

